

A. 16 (A)

HIGHLY CONFIDENTIAL - A. KIRK
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555 (JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

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* * * HIGHLY CONFIDENTIAL * * *

DEPOSITION OF ALEX KIRK

New York, New York

August 31, 2009

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 24545

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<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 August 31, 2009 3 9:30 a.m.</p> <p>4</p> <p>5 HIGHLY CONFIDENTIAL deposition 6 of ALEX KIRK, held at Jones Day, LLP, 7 222 East 41st Street, LLP, New York, 8 New York, before Kathy S. Klepfer, a 9 Registered Professional Reporter, 10 Registered Merit Reporter, Certified 11 Realtime Reporter, Certified Livenote 12 Reporter, and Notary Public of the State 13 of New York.</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2</p> <p>3 A P P E A R A N C E S:</p> <p>4</p> <p>5 JONES DAY, LLP 6 Attorneys for Lehman Brothers, Inc. 7 222 East 41st Street 8 New York, New York 10017-6702 9 BY: ROBERT W. GAFFEY, ESQ. 10 BRIDGET CRAWFORD, ESQ. 11 GEORGE E. SPENCER, ESQ.</p> <p>12</p> <p>13 BOIES, SCHILLER & FLEXNER, LLP 14 Attorneys for Barclays Capital 15 5301 Wisconsin Avenue, NW - Suite 800 16 Washington, DC 20015 17 BY: HAMISH HUME, ESQ.</p> <p>18</p> <p>19 CAHILL, GORDON & REINDEL, LLP 20 Attorneys for the Witness 21 80 Pine Street 22 New York, New York 10005 23 BY: DAVID N. KELLEY, ESQ. 24 JOHN O. ENRIGHT, ESQ.</p> <p>25</p>
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<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 A P P E A R A N C E S: (Cont'd.)</p> <p>3</p> <p>4 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 5 Attorneys for the Creditors Committee 6 51 Madison Avenue 7 22nd Floor 8 New York, New York 10010 9 BY: JAMES C. TECCE, ESQ.</p> <p>10</p> <p>11 JENNER & BLOCK, LLC 12 Attorneys for the Examiner 13 330 N. Wabash Avenue 14 Chicago, Illinois 60611-7603 15 BY: DAVID C. LAYDEN, ESQ.</p> <p>16</p> <p>17 HUGHES, HUBBARD & REED, LLP 18 Attorneys for the SIPA Trustee 19 One Battery Park Plaza 20 New York, New York 10004-1482 21 BY: SETH D. ROTHMAN, ESQ. 22 SAMUEL C. MCCOUBREY, ESQ.</p> <p>23</p> <p>24 Also Present: 25 PHILIP E. KRUSE, Alvarez & Marsal</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 ALEX KIRK, called as a 3 witness, having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows:</p> <p>6 EXAMINATION BY 7 MR. GAFFEY:</p> <p>8 Q. Mr. Kirk, good morning. My name is 9 Bob Gaffey. We met briefly before. I'm with 10 Jones Day. We are special counsel to the estate 11 of Lehman Brothers Holdings, Inc., and as I 12 guess you may know, we are spending some time 13 looking into the facts surrounding the 14 transaction in September of 2008 -- 15 A. Uh-huh. 16 Q. -- through which Barclays purchased 17 some assets from Lehman. 18 Just a few ground rules. If at any 19 time you need a break, just say so. If there's 20 a question pending, I would prefer to get an 21 answer to it and then we can take break, but 22 just speak right up if you want to take five or 23 ten minutes. 24 I'm kind of a fast talker, so if I'm 25 going too fast, tell me and I'll try and slow</p>

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 myself down. And I'm going to ask you please to
3 wait until there's a full question asked before
4 you answer so that we can, as best we can, get a
5 clear record.

6 A. Uh-huh.

7 **Q. Okay?**

8 **Did you have discussions with anyone**
9 **other than your counsel, Mr. Kelley, to prepare**
10 **for your deposition today?**

11 A. Yes.

12 **Q. With whom?**

13 A. I don't remember.

14 **Q. Mr. Kelley or anybody from his firm?**
15 **Anybody outside of his firm?**

16 A. Outside his firm we met with the
17 Barclays lawyers.

18 **Q. Okay.**

19 A. I don't remember their names.

20 **Q. And by whom are you employed, sir?**

21 A. Currently I'm not employed.

22 **Q. Was there a time when you were**
23 **employed at Lehman Brothers?**

24 A. Yes.

25 **Q. Can you give me, sir, just a brief**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **description of the positions you held?**
3 **How long were you at Lehman?**

4 A. I was at Lehman two separate stints.
5 I was at Lehman from December of 1994 until
6 January of 2008.

7 **Q. Uh-huh.**

8 A. And I returned to Lehman in July of
9 2008. When I went to Lehman Brothers from
10 basically July of -- or, December of 1994 till
11 December 2001, I ran the distressed debt
12 business for Lehman Brothers. From 2002 until
13 2006, I ran the high-yield and leveraged loan
14 business for Lehman Brothers. From 2006 until
15 October of 2007, I ran the global credit
16 businesses. From October 2007 until January of
17 '08, I was co-chief operating officer of fixed
18 income, and from -- and then I left the firm.
19 When I returned, I was global head of principal
20 businesses for that brief period of time.

21 **Q. And why did you leave the firm in**
22 **January of '08?**

23 A. The global head of fixed income, Roger
24 Nagioff, had resigned; my partner, Andy Morton,
25 was promoted to head of fixed income; and I

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 reached a mutual agreement to leave the firm
3 with senior -- with the president of Lehman
4 Brothers.

5 **Q. And where did you work in between**
6 **January of '08 and July of '08 when you returned**
7 **to Lehman?**

8 A. Didn't work.

9 **Q. And what occasioned your return to**
10 **Lehman in July of '08?**

11 A. They had promoted Bart McDade to be
12 president of the firm, and he requested that I
13 return to the firm within a few days of his
14 elevation.

15 **Q. And I take it you worked at Lehman --**
16 **well, for how long after July of '08 did you**
17 **work at Lehman Brothers?**

18 A. Until the end. Until most of the
19 employees were transferred to Barclays, U.S.
20 employees.

21 **Q. And at the end, did you transfer over**
22 **to Barclays yourself?**

23 A. Yes.

24 **Q. And when did you start work at**
25 **Barclays?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 A. I don't remember the transfer date, to
3 be honest with you. I worked there till the
4 first week of November.

5 **Q. First week of November '08?**

6 A. Yes.

7 **Q. What positions did you hold at**
8 **Barclays?**

9 A. I didn't have a position at Barclays.

10 **Q. Was there -- I know it was sort of**
11 **tumultuous times. Was there any break in**
12 **between leaving Lehman and going to Barclays, or**
13 **did you just sort of start working at Barclays**
14 **at the end of the Lehman --**

15 A. Whenever the actual HR records
16 transferred.

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25
REDACTED

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<p>REDACTED</p>	<p>REDACTED</p>
<p>Why did you leave Barclays?</p> <p>A. I had -- because I wanted to leave the sell side of the business, broadly, and move to</p>	
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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>HIGHLY CONFIDENTIAL - A. KIRK</p> <p>the buy side of the business.</p> <p>Q. Could you explain to me what you mean by that?</p> <p>A. Meaning I wanted to go work as a principal in a hedge fund or a money management firm.</p> <p>Q. Did you do that?</p> <p>A. I'm in the process of setting up a firm right now.</p> <p>Q. Before you went to work at Barclays, before the end of Lehman, had you had any discussions with anyone at Barclays about the prospects of working there after the Lehman sale was concluded?</p> <p>A. I was approached by Bob Diamond to see if I was interested in a job, broadly, as opposed to a specific job. I told him I wasn't.</p> <p>Q. Pardon me?</p> <p>A. I was not.</p> <p>Q. And when were you approached by Bob Diamond?</p> <p>A. At some point within the first week or two that they were -- I would say probably that week that they were negotiating to buy the firm.</p>	<p>HIGHLY CONFIDENTIAL - A. KIRK</p> <p>If not that week, the week after.</p> <p>Q. Okay. We're going to spend a lot of time today talking about the negotiations on that point, so let me take this point to frame out some dates.</p> <p>I put before you a blank calendar which may help you with days of the week that we'll talk about, but when you talk about the week in which there were negotiations, could you tell me what week or weeks you're talking about?</p> <p>A. The week of September -- Monday, September 15th through Friday, you know, through Sunday, September 21st.</p> <p>Q. And at what point during that week did Mr. Diamond talk to you about coming to work for Barclays?</p> <p>A. I don't remember if it was that week or the following week.</p> <p>Q. Again, just to give us a time point, the transaction we're talking about closed on September 22. Do you recall if it was before or after the closing?</p> <p>A. I don't recall.</p> <p>Q. Was it just you and Mr. Diamond in the</p>

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 conversation?
3 A. Yes.
4 Q. And apart from this conversation with
5 Mr. Diamond, had you had discussions with anyone
6 about going to work for Barclays?
7 A. No.
8 Q. And when you had the discussion with
9 Mr. Diamond, did he talk to you about a
10 compensation package?
11 A. No.
12 Q. When did you first talk to anyone at
13 Barclays about a compensation package?
14 A. First conversation I had with anybody
15 at Barclays was the meeting I sat down with Rich
16 Ricci where he told me what the
17 severance/compensation packet bonus would be,
18 which was in late October.
19 Q. Had you had any conversations with any
20 of your fellow Lehman employees about the topic
21 of compensation at Barclays?
22 A. Bart McDade.

REDACTED

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 at Lehman during that week, the 15th through the
3 22nd?
4 A. No.
5 Q. Let me just put a full question so
6 that we have a clear record, okay?
7 A. Yeah.
8 Q. Did you have conversations with anyone
9 during the week of the 15th to the 22nd about
10 compensation that would be paid to you at
11 Barclays after the 22nd?
12 A. No.

REDACTED

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REDACTED

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8 Q. And what did Mr. McDade say to you?
9 A. He said he agreed and he would talk to
10 Barclays about that. He was on point for those
11 sorts of issues with Barclays.
12 Q. Do you know if he did talk to anyone
13 at Barclays about you in that regard?
14 A. I assume he did.
15 Q. And why do you assume that?
16 A. Because they approached me with a
17 deal --
18 Q. Was the conversation --
19 A. -- a couple weeks later.
20 Q. I beg your pardon.
21 Was the conversation with Mr. McDade
22 during the week of the negotiations between the
23 15th and the 22nd?
24 A. No, it was sometime in late October.
25 Q. Did you have conversations with anyone

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Page 20	Page 21
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div data-bbox="420 1276 578 1325">REDACTED</div> <div data-bbox="233 1494 448 1519">BY MR. GAFFEY:</div> <div data-bbox="233 1528 795 1657">Q. Now, when you met, Mr. Kirk, with Mr. Hume or people from his firm, did you talk about events during a time period other than the time you were employed by Barclays?</div> <div data-bbox="298 1662 730 1690">MR. KELLEY: Objection. Privileged.</div> <div data-bbox="258 1696 730 1795">MR. GAFFEY: I think I can inquire to find out -- a yes or no will tell me whether or not I can press on the privilege point.</div> <div data-bbox="258 1800 644 1830">Q. If you just answer yes or no.</div> <div data-bbox="258 1834 730 1897">MR. KELLEY: No, I'll make the same objection.</div> <div data-bbox="233 1903 781 1964">Q. When did you meet with the lawyers for Barclays?</div>	<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div data-bbox="938 1121 1385 1146">HIGHLY CONFIDENTIAL - A. KIRK</div> <div data-bbox="906 1155 1118 1183">A. Last Thursday.</div> <div data-bbox="906 1190 1167 1218">Q. Who was present?</div> <div data-bbox="906 1224 1347 1252">A. Mr. Hume and -- who was the other?</div> <div data-bbox="941 1259 1260 1287">MR. KELLEY: If you know.</div> <div data-bbox="906 1293 1317 1321">A. I don't remember that guy's name.</div> <div data-bbox="878 1328 1344 1388">Q. And I take it Mr. Kelley or people from his firm were there as well?</div> <div data-bbox="906 1394 1008 1422">A. Yes.</div> <div data-bbox="878 1429 1377 1487">Q. Anyone else other than lawyers from Mr. Kelley's firm or Mr. Hume's firm?</div> <div data-bbox="906 1494 1000 1522">A. No.</div> <div data-bbox="878 1528 1383 1588">Q. Did you review any documents? Just answer that yes or no, please.</div> <div data-bbox="906 1595 1008 1623">A. Yes.</div> <div data-bbox="878 1629 1438 1759">Q. Did any of those documents have the effect of refreshing your recollection about the events concerning the sale of assets from Lehman to Barclays?</div> <div data-bbox="906 1765 1029 1793">A. Some.</div> <div data-bbox="906 1800 1109 1828">Q. Which ones?</div> <div data-bbox="906 1834 1278 1862">A. I don't remember specifically.</div> <div data-bbox="878 1869 1370 1964">Q. Are there any that you remember specifically that refreshed your recollection about matters?</div>

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Not in particular.
3 **Q. In general?**
4 A. Not in -- generally, yes.
5 **Q. Did those documents cover a time**
6 **period prior to -- on or prior to September 22?**
7 MR. KELLEY: I object to that.
8 MR. GAFFEY: I'm not sure of the
9 nature of the objection, David.
10 **Q. Can you answer it?**
11 MR. KELLEY: Privileged.
12 MR. HUME: We would assert the same
13 objection.
14 MR. GAFFEY: Do you contend you have a
15 privilege with this witness?
16 MR. HUME: I think the objection -- I
17 assume what you're questioning is to try to
18 attack this privilege.
19 MR. GAFFEY: I'm not attacking the
20 privilege. I'm just trying to find out if
21 you have a basis to assert it.
22 Do you contend you have a privilege?
23 MR. HUME: Yes, I think that your
24 motion suggested that there were fiduciary
25 breach claims that you were considering as

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Yes.
3 **Q. When?**
4 A. I was involved in discussions that
5 went from Friday, the 12th of September, until
6 Sunday, the 14th, of the transaction that
7 ultimately failed, and I was asked to
8 participate in the discussions, facilitate the
9 discussions starting Friday morning, the 19th.
10 **Q. So if I understand your answer**
11 **correctly, you're not involved in any**
12 **discussions or negotiations with Barclays in the**
13 **period from the 15th through the 18th?**
14 A. That is correct.
15 **Q. Okay. Describe for me, if you would,**
16 **generally the nature of what you did in**
17 **connection with the negotiations from the 12th**
18 **to the 14th, that is, from the Friday to the**
19 **Sunday?**
20 A. Generally, I helped organize the due
21 diligence of the assets of Lehman Brothers that
22 I was responsible for specifically and helped
23 coordinate with some of the other departments
24 meetings that would take place with Barclays.
25 In addition, I was down at the Federal

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 to senior Lehman officers and as part of
3 your investigation of potential claims
4 against Barclays, but the same theory would
5 give rise to claims against the officers and
6 against Barclays. So, yes, I think we do
7 have a common interest privilege in that we
8 both deny those claims.
9 MR. GAFFEY: I'll leave that, but I
10 don't want to have a colloquy on the record.
11 I disagree.
12 BY MR. GAFFEY:
13 **Q. Let's talk about that week, the week**
14 **in September that's brought us here. Can you**
15 **tell me, sir, as a general matter, did you play**
16 **any role in the negotiations of the agreement**
17 **between Lehman and Barclays that led to the sale**
18 **of assets to Barclays.**
19 **(The witness confers with Mr. Kelley.)**
20 A. Is the week you're referring to the
21 15th through the 21st?
22 **Q. Yes. Well, let me reframe it because**
23 **you asked that question. At any point during**
24 **September of 2008, were you involved in any**
25 **discussions or negotiations with Barclays?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 Reserve both Saturday and Sunday, so I
3 participated in probably two different
4 discussions with Barclays on Saturday and
5 Sunday.
6 **Q. And what was the -- actually, if you**
7 **don't mind, just so we have some term we can use**
8 **and I don't have to keep saying it this way,**
9 **could you give me, you referred to the assets**
10 **you were responsible for specifically. What**
11 **were those assets called?**
12 A. The global principal business.
13 **Q. What was the nature of the transaction**
14 **that was being discussed from the Friday and the**
15 **Saturday and the Sunday, the 12th through the**
16 **14th?**
17 A. The nature of that transaction was
18 Barclays was going to buy all of Lehman
19 Brothers.
20 **Q. Do you know what the structure of that**
21 **transaction was? Was it an asset purchase?**
22 **Stock purchase? Did you have any sense of that?**
23 A. It was a -- I'm not an M&A expert, but
24 I believe they were going to assume the debt and
25 other contractual obligations of Lehman

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 Brothers. They were going to not assume the
3 preferred stock of Lehman Brothers and they were
4 going to pay a nominal, less than a dollar, per
5 share price for part of the equity and they were
6 going to spin off the real estate and private
7 equity positions into a new company which would
8 be capitalized with debt by a consortium of
9 lenders and have as its equity capital the
10 preferred stock of Lehman Brothers and the
11 equity.
12 **Q. And you said that that transaction**
13 **failed. Why did that transaction fail, do you**
14 **know?**
15 A. I was told by Bart McDade that the FSA
16 had turned down the application to close that
17 transaction.
18 **Q. When were you told this by Mr. McDade?**
19 A. Sunday around noon.
20 **Q. Now, did you have any role in those**
21 **negotiations, again I'm on the 12th through the**
22 **14th, other than as you described, the sense I'm**
23 **getting is primarily involved with due diligence**
24 **for the global principal business.**
25 A. Yes, we had -- I spent most of my time

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Lehman's books to personnel from Barclays?**
3 A. I don't recall specifically, but
4 probably. We were down at the Federal Reserve
5 in rooms across the hallway.
6 **Q. During the period from Friday, the**
7 **12th, through Sunday, the 14th, were you dealing**
8 **with any particular people at Barclays who you**
9 **could name?**
10 A. Archibald Cox. Bob Diamond. Rich
11 Ricci. Michael Klein, as their agent.
12 **Q. Anyone else?**
13 A. Those are the ones I recall.
14 **Q. And was there a principal -- were**
15 **there a group of people you would describe as**
16 **the principal negotiators for Lehman? Again,**
17 **I'm in the 12th through the 14th.**
18 A. Mark Shafir, who was head of M&A; Bart
19 McDade, who was president; and via telephone,
20 Dick Fuld.
21 **Q. Anyone else you would characterize,**
22 **that you would describe as Lehman's principal**
23 **negotiators?**
24 A. I was the advisor. I believe,
25 although I don't know for sure, I don't have any

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 trying to coordinate due diligence with our
3 principals and the rest of the street, meaning
4 Goldman Sachs, Citigroup, First Boston, et
5 cetera, around the value of those assets which
6 they were going to make a loan to the spun-off
7 company.
8 **Q. And were Barclays personnel involved**
9 **in that process?**
10 A. Not in the due diligence process, no.
11 **Q. Were you in touch with Barclays**
12 **personnel about this due diligence process?**
13 A. There were some joint meetings that
14 were arranged between Goldman Sachs and
15 Citigroup as point for the street and Barclays
16 and Lehman Brothers together. Barclays
17 personnel were obviously in those meetings.
18 **Q. To your knowledge, at any point in**
19 **that period from Friday to Sunday were people**
20 **from Barclays given an opportunity to review**
21 **Lehman's books for due diligence purposes?**
22 A. Yes, I believe they continued to do
23 due diligence over the weekend.
24 **Q. And did you have any involvement in**
25 **that project, that process, giving access to**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 direct knowledge, but I have secondhand
3 knowledge that Skip McGee was involved.
4 **Q. Anyone else?**
5 A. That's all I know.
6 **Q. What's the basis of your secondhand**
7 **knowledge that McGee was involved?**
8 A. Mark Shafir would call Skip from the
9 Federal Reserve.
10 **Q. After that transaction failed, did**
11 **there come a time when you learned that**
12 **negotiations had begun again between Barclays**
13 **and Lehman?**
14 A. Late Sunday night sometime between 11
15 and 2 in the morning.
16 **Q. Would you describe that to me? How**
17 **did you learn it? Where were you when you**
18 **learned it?**
19 A. I believe I was in Bart McDade's
20 office, and he mentioned that Barclays had --
21 they had had contact with Barclays and Barclays
22 was interested -- "they" meaning Dick himself,
23 Skip and Barclays was interested in pursuing an
24 acquisition of the U.S. businesses of Lehman
25 Brothers.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **Q. Did he tell you anything more than**
3 **that? Who called who or anything that was said**
4 **in the conversation?**
5 A. No, nothing more than that.
6 **Q. Who else was present when you learned**
7 **this from Mr. McDade on Sunday night?**
8 A. I don't recall specifically, but
9 probably Mike Gelband.
10 **Q. I should tell you, and I should have**
11 **said this upfront, I don't want you, please, to**
12 **speculate during the day.**
13 A. Okay.
14 **Q. Once or twice you've answered by**
15 **saying "probably," and it's common usage, but if**
16 **you can give me your memory of things, as you**
17 **have been, tell me when you'd have to speculate,**
18 **okay --**
19 A. Okay.
20 **Q. -- so the record will be clear.**
21 So do you know if Mr. Gelband was in
22 that conversation?
23 A. I don't recall.
24 **Q. Now, do you know if that conversation**
25 **took place before or after Lehman filed for**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. No.
3 **Q. Did anyone ask you to do anything in**
4 **connection with these new renewed negotiations?**
5 A. No.
6 **Q. Did there come a time when you learned**
7 **the negotiations --**
8 A. I'm sorry.
9 **Q. Beg your pardon. Go ahead.**
10 A. No, not that evening.
11 **Q. Not that evening, okay.**
12 Did come a time where you were asked
13 to perform some tasks or do something in
14 connection with the negotiations?
15 A. Yes.
16 **Q. And when did that happen?**
17 A. Late Thursday night, the 18th of
18 September.
19 **Q. I'm coming there.**
20 Did there come a time when you learned
21 there was an agreement reached between Lehman
22 and Barclays concerning the sale of Lehman
23 assets to Barclays?
24 A. Yes.
25 **Q. When did you learn that?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 bankruptcy protection?
3 A. I don't remember exactly when the firm
4 filed, but that's a matter of record, so ...
5 **Q. Well, do you know, do you remember**
6 **when you learned, first learned the firm was**
7 **going to file? Withdrawn.**
8 Did you know before the firm filed
9 that it was going to do so?
10 A. Yes.
11 **Q. When did you learn, first learn that**
12 **the firm was going to file?**
13 A. After the board meeting on Sunday
14 night, approximately 8 o'clock.
15 **Q. Did you attend that board meeting?**
16 A. No.
17 **Q. From whom did you learn the substance**
18 **of the board meeting?**
19 A. I don't recall.
20 **Q. And the conversation with Mr. McDade**
21 **about renewed negotiations with Barclays, did it**
22 **take place after the board meeting?**
23 A. Yes.
24 **Q. Did Mr. McDade ask you to do anything**
25 **in connection with these renewed negotiations?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. Sometime Tuesday.
3 **Q. From whom did you learn that?**
4 A. I don't recall.
5 **Q. Did you learn whether that agreement**
6 **was reduced to a writing?**
7 A. No.
8 **Q. Have you ever seen any -- the written**
9 **agreement, have you ever seen a written**
10 **agreement between Lehman and Barclays concerning**
11 **the asset sale?**
12 A. No.
13 **Q. So you learn on maybe the Tuesday that**
14 **there's a deal between Lehman and Barclays, and**
15 **then -- and on late Thursday night you're asked**
16 **to participate in some way.**
17 How are you spending your time between
18 the Tuesday and Thursday?
19 A. I'm spending, between really Sunday
20 night and Thursday, I was spending all my time
21 attempting to help coordinate the risk reduction
22 and risk management of the firm so it could
23 survive for a few days to get to closure.
24 **Q. Now, did those -- now I'm in the**
25 **period from, that you just described, from the**

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HIGHLY CONFIDENTIAL - A. KIRK

Sunday up until Thursday.

A. Uh-huh.

Q. Are you working with any people from Barclays in connection with those activities?

A. I don't recall specifically working with Barclays employees. Just Lehman employees.

Q. Were you in communications with Barclays employees?

A. Not directly. I would have communicated to our finance staff and they would have communicated to Barclays.

Q. And who on the finance staff?

A. Ian Lowitt, Paolo Tonucci.

Q. Did you also deal with Martin Kelly?

A. Maybe once, twice.

Q. When you learned about a deal between Lehman and Barclays having been concluded, what was your understanding of the nature of the deal?

A. That I was -- that it was going to be an asset purchase deal and that they were going to purchase some amount of assets and assume the employees of Lehman, some of the limited obligations of Lehman Brothers.

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Did you have an understanding who the principal negotiators for Lehman of that transaction were?

A. I understood it to be Mark Shafir, Skip McGee.

Q. Did Mr. McDade have any role in those negotiations, to your understanding?

A. I believe he did.

Q. But you wouldn't describe him as one of the principal negotiators?

A. He might have been.

Q. Do you have a reason to think he might have been? Is it that --

A. He was the president of the firm.

Q. But other than his title, do you have a basis for thinking he might have been one of the principal negotiators?

A. No.

Q. Did you talk to Shafir about the negotiations?

A. No.

Q. Did you talk to McGee about the negotiations?

A. No.

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Did you have an understanding of the asset components that were going to be purchased?

A. No.

Q. Did you ever learn what asset components were going to be purchased?

A. Are you specifically asking about the deal that was struck on that Tuesday?

Q. Yes.

A. No.

No, let me be more specific.

Q. Sure.

A. I got an e-mail that said they were going to purchase the building and a pool of other broadly defined assets.

Q. Who did you get that e-mail from?

A. Ajay Nagpal.

Q. Could you spell that so we have it in the record, please?

A. A-J-A-Y N-A-G-P-A-L.

Q. What understanding did you have of the constituent parts of the pool of the defined assets apart from the building?

A. None.

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Did you have an understanding of the nature of the liabilities that Barclays was going to assume under the agreement?

A. Not at the time.

Q. Did there come a time when you did gain an understanding of the liabilities Barclays was going to assume under the agreement?

A. A very cursory understanding on Friday.

Q. That's on Friday, the 19th?

A. Correct.

Q. From whom did you get that understanding?

A. Paolo Tonucci.

Q. What did Mr. Tonucci tell you in that regard?

A. That there were two categories. One was assumption of certain trade liabilities and the other was the assumption of compensation liabilities, and that they together totaled somewhere over \$4 billion.

Q. Did you talk to anyone other than Mr. Tonucci about these assumed liabilities that

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HIGHLY CONFIDENTIAL - A. KIRK
totaled somewhere over \$4 billion?

A. During Friday, the amount of those liabilities were referenced several times by Paolo, who was attempting to accurately estimate them, and by Barclays in their description of the deal later in the afternoon.

Q. Let's go back to the earlier part of the week. I swear I'm getting to Thursday and Friday.

A. That's all right.

Q. Now I'm still sort of in the early part of the week.

Were you asked to be involved in any assessment of the value of the pool of securities that was to be sold?

A. No.

Q. Did you ever come to understand that the agreement between Lehman and Barclays included a loss, an overall loss against the amount at which those assets were carried on Lehman's books?

A. No.

Q. Did you ever at any time have an understanding that that agreement involved a

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HIGHLY CONFIDENTIAL - A. KIRK
discount of any kind given to Barclays against the amount shown on Lehman's books of those assets?

A. No.

Q. Apart from your counsel and counsel from Mr. Hume's firm, have you spoken to anybody about that topic?

A. No.

Q. When you learned about the sale of a pool of assets, and again, apart from the real estate on Tuesday, did you have an understanding it was to be sold at book value?

A. I didn't have an understanding one way or the other.

Q. So on the Monday, the Tuesday, the Wednesday and during the day on Thursday, if I understand what we've talked about so far correctly, you're essentially involved in managing risk?

A. Yes.

Q. And the purpose, apart from the inherent reason for doing it --

A. Keep the firm funded.

Q. Did you have an understanding, while

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HIGHLY CONFIDENTIAL - A. KIRK
you were doing that, of how long you needed to do that? What the timetable was for things?

A. We knew we were -- I believe they were trying to schedule a meeting with the bankruptcy court on Friday evening, Friday afternoon.

It was really a day-to-day operation.

Q. And during that day-to-day operation, did any of your activities involve entering into or addressing repurchase agreements, repos?

A. Some of them.

Q. Could you describe that for me? What was the nature of your activities in connection with repos?

A. The firm had a number, a large number of clients whose assets had been trapped under repurchase agreements in the European subsidiaries, so we spent some time trying to figure out how we were going to help solve those issues. That was a big piece of it.

And then we were also trying to shrink the matched book because it used liquidity at the firm as a way to raise liquidity, so where you would finance client positions with other client's money.

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Financing of client positions with other client's money; is that what you're talking about when you talk about the matched book?

A. Yes.

Q. And by shrinking the matched book, you're reducing that level of activity of --

A. Yes.

Q. -- using --

A. And you're -- it would -- I was told it would free up liquidity.

Q. And did you have any involvement, sir, in connection with the Repurchase Agreement that Lehman had with the Fed?

A. Only -- my only involvement there was I was at the Fed when they told us Sunday evening that they would lend us money to pay back the tri-party repo lenders the following morning.

Q. And did Lehman enter into a Repurchase Agreement with the Fed for that purpose, do you know?

A. Yes, they did.

Q. Were any of your activities devoted to

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 the making of that Repurchase Agreement with the
3 Fed?
4 A. No.
5 **Q. Did there come a time when the Fed**
6 **made it known it wanted to come out of that**
7 **Repurchase Agreement, to your knowledge?**
8 A. Yes.
9 **Q. Describe to me how you came to learn**
10 **that.**
11 A. I don't recall specifically who told
12 me.
13 **Q. As a general matter, tell me what you**
14 **remember about learning that the Fed wanted to**
15 **get out of the Repurchase Agreement with Lehman?**
16 A. At some point on Wednesday, the Fed
17 said that they wanted to get paid back, I
18 believe it was Wednesday, and Lehman had to
19 figure out how to arrange alternative financing,
20 and there was only one party that would provide
21 that financing and that was Barclays.
22 **Q. And what did you do in connection with**
23 **those activities, if anything?**
24 A. I was not a repo expert. I didn't --
25 I was not -- I'm not a repo expert. I did not

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 think you also told me there was a conversation
3 late on Thursday night that began your Friday
4 activities?
5 A. Yes.
6 **Q. Okay. Let's talk about that one**
7 **first. Who's the conversation with, where are**
8 **you, and what's the content of the conversation?**
9 A. I'm at home. I get a call from Bart
10 McDade. He informs me that Mark Shafir has left
11 Lehman Brothers and that he needs some help
12 wrapping up the Barclays deal the following day.
13 **Q. Had Shafir left on the Thursday?**
14 A. I believe so.
15 **Q. You described Shafir as one of the**
16 **principal negotiators. As of the Thursday, to**
17 **your knowledge, has he now gone?**
18 A. Yes.
19 **Q. Did McDade have anything to say about**
20 **that topic?**
21 A. He said he went -- he quit and he went
22 to work at Citigroup.
23 **Q. Other than telling you that Shafir had**
24 **quit and gone to work at Citigroup, did**
25 **Mr. McDade have anything to say about**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 participate in those.
3 **Q. How did you learn about those**
4 **activities? From whom?**
5 A. I don't recall specifically.
6 **Q. Do you have any general recollection?**
7 A. Probably the finance staff.
8 **Q. And that would be Tonucci?**
9 A. Ian Lowitt or Tonucci, one or the
10 other.
11 MR. GAFFEY: Can we take a five-minute
12 break?
13 THE WITNESS: Sure.
14 (Recess; Time Noted: 10:21 A.M.)
15 (Time Noted: 10:29 A.M.)
16 BY MR. GAFFEY:
17 **Q. In a question I asked you a little**
18 **while ago, Mr. Kirk, you clarified by saying,**
19 **"You mean the agreement made on Tuesday?" Did**
20 **there come a point where you learned that the**
21 **deal had changed?**
22 A. Friday.
23 **Q. Okay. Here we are. Tell me about**
24 **Friday.**
25 **Actually, let me just back up. I**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 Mr. Shafir's departure --
3 A. No.
4 **Q. -- on this Thursday?**
5 A. No.
6 **Q. Did Mr. McDade say anything about the**
7 **departure, Shafir's departure having any impact**
8 **on the deal?**
9 A. He said that, given his departure, he
10 would need extra help and he asked for my help.
11 **Q. What did he ask you to do?**
12 A. That evening he did not specify what
13 he wanted me to do.
14 **Q. Tell me what Mr. McDade said and what**
15 **you said in that conversation on Thursday night,**
16 **as best you remember.**
17 A. He said that Mark Shafir has quit,
18 gone to Citigroup, I need some help wrapping
19 this up tomorrow, can you help me, I said yes.
20 **Q. That's the entire conversation as you**
21 **remember it?**
22 A. Yes.
23 **Q. Did you ask him what he needed you to**
24 **do?**
25 A. I think I asked him, Do you want me to

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 come in the office tonight? He said no, he was
3 already home. I said, What time do you want me
4 to come in the morning? And he said, you'll get
5 an e-mail about an early morning meeting.

6 Q. Did you speak to anyone else that
7 Thursday night about the deal after you spoke to
8 Mr. McDade?

9 A. Not that I recall.

10 Q. So let's just get through the rest of
11 Thursday night, okay? After you have the
12 conversation with Mr. McDade, he says he needs
13 your help, there will be an early morning
14 meeting.

15 Did you do anything else with respect
16 to the transaction on the Thursday night?

17 A. I don't recall specifically or
18 generally.

19 Q. On the Thursday, sir -- I'll show you
20 a document about this in a second -- do you
21 recall reaching out to others in the firm,
22 including Kaushik Amin and Gerald Donini and
23 Eric Felder, to ask them to put together
24 information to -- that would be necessary to
25 portray a fire sale liquidation of the

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 securities?

3 A. I may have done so by e-mail.

4 Q. Okay. I'll show you the e-mail, but
5 first, if you don't mind, what's your
6 independent recollection of that, if you have
7 any?

8 A. My independent recollection is that I
9 got an e-mail for a scheduled meeting the
10 following day and I got a request, I didn't
11 recall when it was specifically, to help
12 organize a valuation exercise on behalf of Barry
13 Ridings. I didn't recall whether that was
14 Thursday night or Friday morning.

15 Q. And who is Barry Ridings?

16 A. A Lazard restructuring banker hired by
17 the firm to testify in bankruptcy court.

18 Q. And who made this request of you?

19 A. I don't recall specifically who asked
20 me to do that.

21 Q. I'm showing you, Mr. Kirk, what has
22 been marked at a prior deposition as Exhibit 3
23 an e-mail from you to an address
24 4955214@archwireless.net. Is that your wireless
25 account?

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1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. I believe we've determined that was a
3 wireless account that was used in the late '90s
4 when there were wireless pagers, if you recall
5 those devices.

6 Q. Okay. Uh-huh.

7 A. But had been inoperative but still
8 alive in the system.

9 Q. Okay. You're about to solve one of
10 the great mysteries of this case.

11 A. Yeah, we had --

12 Q. Did you have that account? Are you
13 sending it to your home e-mail?

14 A. I don't -- no, this is auto-forwarded
15 by the computers.

16 Q. Okay.

17 A. So like they auto-forward to your
18 BlackBerry, these are things that auto-forward
19 from the --

20 Q. You would love it right now if I said
21 I have nothing further, but that wasn't the key
22 question, so let me go to the exhibit that I
23 showed you.

24 A. We had to ask ourselves the same
25 question when we saw this.

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1 HIGHLY CONFIDENTIAL - A. KIRK

2 Q. Okay. Take a minute to look through
3 what was marked as Exhibit 3, sir. I have a
4 couple questions for you about it.
5 (Document review.)

6 A. Okay.

7 Q. In this, who is Daniel Flores, the man
8 from whom the underlying e-mail is sent?

9 A. I believe Daniel worked for Mark
10 Shapiro. It's indicated he worked in the
11 restructuring group that was run by a fellow
12 named Mark Shapiro at Lehman.

13 Q. And in the e-mail, you see that
14 Mr. Flores recounts, "Alex Kirk suggested we
15 contact each of you to help us understand on a
16 theoretical basis what would happen in a fire
17 sale liquidation of the securities that are
18 being transferred to Barclays as part of the
19 proposed transaction."

20 Did you have a conversation or
21 communication with Mr. Flores about that topic?

22 A. This indicates I must have.

23 Q. Apart from seeing it written on this
24 e-mail, do you have any recollection?

25 A. I don't recall.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **Q. Does this e-mail refresh your**
3 **recollection in any way of a communication with**
4 **Mr. Flores about that topic?**

5 A. Again, I assume that I must have
6 talked to him.

7 **Q. But again, sir, apart from seeing it**
8 **on the page in front of you, do you have a basis**
9 **for that assumption?**

10 A. No.

11 **Q. You said that that was -- well, let me**
12 **continue down into Mr. Flores' e-mail where he**
13 **talks about, "We will be leaving on your desks a**
14 **list of the top 100 positions in each of your**
15 **area's expertise." Did that exercise take**
16 **place, to your knowledge?**

17 A. Yes, I believe it did.

18 **Q. And what was the result of the**
19 **exercise? Was there a fire sale liquidation**
20 **scenario put together?**

21 A. So these positions were delivered to
22 each of the recipients of this e-mail, Kaushik
23 Amin, Charlie Spero, Eric Felder, Gerry Donini,
24 were the various business heads in charge of
25 parts of fixed income or equities, and they

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 determine in any comprehensive way the values.
3 So we adjourned the meeting with the -- with a
4 plan that Barry Ridings would talk to each of
5 these individuals separately closer to the end
6 of the day when they might have a better sense.

7 **Q. Do you know if Mr. Ridings did that?**

8 A. I don't know that.

9 **Q. Did he speak to you at all?**

10 A. Not about this topic. I saw him later
11 in the day in a meeting.

12 **Q. Let me just back up a little bit. Did**
13 **Ridings know you were organizing this project?**

14 A. Yes.

15 **Q. Would he have known you're the contact**
16 **guy on it?**

17 A. Yes. I probably called him and told
18 him call these people directly.

19 **Q. Did you have any conversations that**
20 **you recall with Mr. Ridings about the need for a**
21 **liquidation scenario to be analyzed?**

22 A. I assume he clarified the reasoning as
23 a test for the court.

24 **Q. When you say you assume that, what's**
25 **the basis of that assumption?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 would have been -- had those delivered early in
3 the morning, and then we were attempting to have
4 an 11 o'clock meeting to go over the findings of
5 their -- their assumptions and analysis about
6 the value of those positions.

7 **Q. And did that meeting take place?**

8 A. Yes, it did.

9 **Q. Were you at it?**

10 A. Yes.

11 **Q. Who was at the meeting?**

12 A. Mike Gelband, Kaushik Amin, Charlie
13 Spero and Gerry Donini, and Daniel Flores was
14 there as well as Gerry Reilly.

15 **Q. Was James Seery there?**

16 A. He might have been. I recall he was
17 there.

18 **Q. You do recall he was there?**

19 A. I recall he was there.

20 **Q. Was a determination made about**
21 **liquidation value?**

22 A. No. The data had been delivered in --
23 the position data had been delivered in a way
24 that, given the short period of time, a couple
25 hours, the business heads were not able to

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1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. I vaguely recall having a conversation
3 with him.

4 **Q. Let's go to the early morning of**
5 **Friday, the 19th. You spoke a moment ago about**
6 **getting a call from Mr. McDade. Shafir's quit.**
7 **He asked for your help, can you come to meet**
8 **with him in the morning. Did you do that?**

9 A. Yes.

10 **Q. And where was the meeting?**

11 A. It was a -- I believe it was in my
12 office.

13 **Q. In your office, sir?**

14 A. Yes.

15 **Q. Who was in attendance?**

16 A. Ian Lowitt, Chris O'Meara, Gerry
17 Reilly, Paolo Tonucci. I think that was it.

18 **Q. Was Mr. McDade there?**

19 A. I don't believe, no, I don't believe
20 he was there.

21 **Q. Now, in your conversation with**
22 **Mr. McDade the night before, he had told you**
23 **Shafir quit, he told you he needed your help,**
24 **you offered to come in, he said come in the**
25 **morning, if I remember your testimony right, and**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **that's not what governs, that's basically the**
3 **topics you covered with McDade on Thursday**
4 **night.**

5 **So here you are in a meeting with**
6 **Lowitt, O'Meara, Reilly and Tonucci. Do you**
7 **learn more at the meeting about the nature of**
8 **the help that you're going to have to give?**

9 A. They broadly outlined the first
10 transaction. That was a quick summary. Then we
11 discussed an issue that had come up earlier that
12 morning around JPMorgan as our clearing bank
13 shutting down Lehman's DTC account and what
14 effect that would have on the transaction as
15 planned.

16 **Q. Now, you referred to -- you said they**
17 **broadly outlined the first transaction. By the**
18 **Friday morning, is it your understanding there's**
19 **a second transaction, a subsequent transaction?**

20 A. By the time we had this meeting --

21 **Q. Uh-huh.**

22 A. -- it was my view, my opinion, that
23 there would have to be a reworking of the
24 transaction because a vast majority of those
25 securities that had been planned for transfer

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 were held at JPMorgan. There was a -- and
3 JPMorgan had a dispute of some sort about the
4 transfer of the repo with Barclays, which was
5 described to me by Mike Keegan, and in addition
6 to that, they shut down Lehman's -- they closed
7 down Lehman's DTC account, which led me to
8 believe that JPMorgan would not cooperate and
9 transfer the aforementioned securities to
10 Barclays on that Friday.

11 **Q. When had you spoken to Mike Keegan?**

12 A. I got up and I went to the office
13 about 5 A.M. and I ran into him about 5:30 in
14 the morning.

15 **Q. Had you met Mr. Keegan before?**

16 A. I had met him the week before during
17 the due diligence process.

18 **Q. So you say "they," that's some**
19 **combination of Lowitt, O'Meara, Reilly and**
20 **Tonucci, broadly outlined the first transaction**
21 **to give you a quick summary?**

22 A. Yes.

23 **Q. How did they summarize -- tell me what**
24 **you remember about their broad outline of the**
25 **first transaction, the quick summary that they**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **gave you.**

3 A. They summarized it as a purchase of
4 the building, purchase of assets, and an
5 assumption of this 4 billion, 4 and a quarter
6 billion dollars in liabilities.

7 That discussion ended very quickly
8 because of my belief that that transaction,
9 given what had just transpired -- what I had
10 learned from Keegan and the action that JPMorgan
11 had taken, that I believe that they would act as
12 a hostile party towards the closing of this
13 transaction and that whatever had taken place
14 before was irrelevant.

15 **Q. Did Mr. Tonucci tell you anything**
16 **other than there was an assumption of**
17 **liabilities in an approximate amount of 4 and a**
18 **quarter billion for compensation of payables?**

19 A. No.

20 **Q. Did you have any knowledge as to how**
21 **that number came to be determined?**

22 A. No. I was not concerned with that
23 part of the transaction.

24 **Q. I'm sort of away from the Friday**
25 **meeting for a moment.**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 A. No.

3 **Q. At any point did you come to an**
4 **understanding as to how those, those components**
5 **of assumed liabilities came to be calculated?**

6 A. No. No.

7 **Q. When the transaction, the first**
8 **transaction was outlined to you by Tonucci,**
9 **O'Meara, Reilly and Lowitt, or some combination,**
10 **did you have an understanding as to where the**
11 **assets would come from to fund those assumed**
12 **liabilities?**

13 A. I believe there was a schedule,
14 one-page schedule, which I think you have, that
15 broadly gave an asset and liability balance
16 sheet.

17 **Q. Have you ever seen that schedule?**

18 A. Yes.

19 **Q. When did you first see that schedule?**

20 A. I believe it was that morning. It was
21 that morning.

22 **Q. Apart from the schedule, did you look**
23 **at any other documents that morning?**

24 A. No.

25 **Q. I'm putting before you what previously**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **has been marked as Deposition Exhibit 19.**
3 A. Yes, that's the schedule.
4 **Q. And the schedule that you saw that**
5 **morning was the one with the annotation in the**
6 **upper right-hand corner "9/16/08, Final SB"?**
7 A. Uh-huh.
8 **Q. Do you remember that?**
9 A. Yes.
10 **Q. Okay. Who gave you the schedule?**
11 A. One of the gentleman.
12 **Q. Do you recall which one?**
13 A. No.
14 **Q. Did anybody tell you anything about**
15 **the schedule?**
16 A. They briefly described it as an asset
17 sale that was approximately this size of this
18 characteristics of the category of assets that
19 they were going to buy, category of liabilities
20 that they were going to assume, including
21 financing liabilities and the aforementioned
22 cure payment and comp.
23 **Q. When you refer to the financing**
24 **liabilities, are you just sort of broadly**
25 **describing the liabilities opposite the**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. No.
3 **Q. Did you ask?**
4 A. No.
5 **Q. Now, present at the meeting was**
6 **Lowitt, O'Meara, Reilly and Tonucci. Was**
7 **anybody participating by telephone?**
8 A. I don't recall.
9 **Q. Was there any participation in that**
10 **Friday morning meeting by anybody from Barclays?**
11 A. No.
12 **Q. So they broadly outlined the first**
13 **transaction. They tell you the problem with**
14 **JPM, one of them or some combination of them.**
15 **What happens next in that meeting?**
16 A. We break up. I tell them that I'm
17 going to go try to shepherd the valuation
18 process that I have been asked to follow up on
19 for this 11 o'clock meeting and that I'm going
20 to try to arrange a meeting with the senior
21 executives at Barclays to explain to them what
22 my view was, that this transaction as outlined
23 couldn't be closed on that Friday night, which
24 they agreed with.
25 Oh, I tell them I'm first going to go

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **particular assets in ST borrowings, government**
3 **and agencies?**
4 A. Yes.
5 **Q. The ones that add up to 33.9?**
6 A. Well, in addition, there's the 34.5
7 below that.
8 **Q. For collateralized short-term funding,**
9 **right?**
10 A. Yes.
11 **Q. Now, did you have an understanding**
12 **when you were shown this schedule of where the**
13 **values for assets -- from where the values for**
14 **assets were derived?**
15 A. I don't recall. We quickly moved on
16 from this.
17 **Q. Did whoever described the schedule to**
18 **you, did they give you any description of the**
19 **role that any of that schedule played in the**
20 **first transaction?**
21 A. They described it as the template for
22 the first transaction.
23 **Q. And do you know who put together the**
24 **schedule that was the template for the first**
25 **transaction? Did they tell you that?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **inform senior Lehman executives, Bart and Dick,**
3 **of this problem.**
4 (Mr. Kelley confers with the witness.)
5 A. I'm sorry, just to clarify, my
6 assumption about this being problem -- this
7 transaction being problematic was agreed to.
8 The basis for that worry was verified by or
9 agreed to by Ian Lowitt and Paolo Tonucci in
10 that meeting.
11 **Q. As I understand it, your primary**
12 **activities for the week until this Friday**
13 **morning meeting had been in risk management --**
14 A. Uh-huh.
15 **Q. -- had been in shrinking the matched**
16 **book, keeping the firm alive so that the Friday**
17 **hearing had some possibility of succeeding, is**
18 **that a fair summary?**
19 A. Yes.
20 **Q. And you're called into this meeting on**
21 **Friday morning and told that the transaction**
22 **that's been on the table all week can't go**
23 **forward because of this problem. This may seem**
24 **an odd question, sir, but why are you now the**
25 **guy that has to call Barclays and call senior**

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HIGHLY CONFIDENTIAL - A. KIRK
management? Did you have an understanding of why you're the lucky winner of that responsibility?

A. Because I volunteered. Yeah, I --

Q. Did you have --

A. Believe me, I almost had a heart attack just thinking about that.

(Mr. Kelley confers with the witness.)

A. That's true. In addition to Mark Shafir had left the firm, so ...

Q. That's sort of implicit in my question. Why are you the guy who has to step up to the plate when Shafir leaves? Why not McGee? Why not Tonucci? Why not Lowitt?

A. Because Bart trusted me.

Q. So did you go and inform more senior Lehman executives of the issues of the problem?

A. Yes.

Q. Okay. Tell me about that. Who did you contact and what did you tell them, what did they say to you?

A. I contacted Bart, I don't recall who else was in the meeting exactly, but I walked in, and there were others, I don't remember who

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HIGHLY CONFIDENTIAL - A. KIRK
exactly, Fuld, most likely, that the assets and liabilities that had been assumed to be transferred in the first transaction were all held in custody or had to be cleared through JPMorgan, and because JPMorgan had taken this hostile action, there was a dispute, which I didn't understand the exact nature of, with the transfer of collateral between Barclays and -- between the Fed through JPMorgan to Barclays.

I knew at a very high level there was a dispute between the two firms as to what collateral was accept -- what collateral was transferred and what collateral was left at JPMorgan, and I knew that JPMorgan had shut down Lehman's DTC account and failed all the settlements on that Friday, and a combination of those two pieces of information led me to believe that JPMorgan wouldn't transfer these assets on this schedule and liabilities, both sides, in any normal course.

Q. And when you reported this to McDade, you said -- withdrawn. You said Fuld was there, most likely.

Do you have a recollection of him

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HIGHLY CONFIDENTIAL - A. KIRK
being there, or are you assuming again, because of his role, his title, that he might have been?

A. Yes, I'm assuming because of his title he might have been.

Q. But you do recall talking to McDade about it?

A. Yes.

Q. Do you recall anyone else other than McDade to whom you spoke?

A. No.

Q. And what did Mr. McDade say?

A. He said we should have a sit-down with the Barclays senior team and we should explain our point of view on this ASAP.

Q. And what happened next?

A. We had a meeting with Bart, myself, and then it was Michael Klein, Rich Ricci, and Mike Keegan from Barclays.

Q. Where was the meeting?

A. It was in an office on 31 that Barclays was using as temporary space.

Q. And who's there from the Lehman side of the table?

A. Bart and I were there.

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Anyone else?

A. Ian was there as well, I'm pretty sure.

Q. Was Tonucci there?

A. I don't remember.

Q. Do you recall whether or not with regard to which ones there were, do you recall a bigger meeting than that, or is this the assembly of people that you remember?

A. It was an assembly of no more than ten people total.

MR. GAFFEY: Can we go off the record for a minute?

(Discussion off the record.)

(Recess; Time Noted: 10:59 A.M.)

(Time Noted: 11:09 A.M.)

BY MR. GAFFEY:

Q. We were, before the break, we were at this Friday morning meeting, and so I want to go through in as much detail as I can what happened at that meeting and who said what.

I have a general sense that the JPM problem has arisen. Did you have a sense, was there any discussion about the JPM problem being

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HIGHLY CONFIDENTIAL - A. KIRK
related in any way to the Repurchase Agreement with Barclays?

A. Yes.

Q. Describe that for me. What was your understanding?

A. So, to be clear, I'm not an expert, was not an expert on repo, so I was learning things for the first time that day that I didn't understand how they actually worked prior to that. So I got what was a cursory as opposed to a detailed explanation of the issue, but as I understood it from the way that Mike Keegan explained it to me was that the Fed had been providing a repo for Lehman Brothers earlier in the week of approximately \$50 billion, that the Fed had made it known that they wanted to be repaid on that repo, and that Barclays had agreed to assume that repo obligation from the Fed. Without that financing the firm would have collapsed the next morning.

So the way it was explained to me was, during the transfer of those -- that loan and the collateral associated with that loan, there were many pieces of collateral that Barclays

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HIGHLY CONFIDENTIAL - A. KIRK
could not value, so they did not accept them in transfer from the Fed. And mechanically, it was explained to me the way that worked was, in a tri-party repo, the Fed transferred all of the positions to JPMorgan and then JPMorgan began transferring those positions upon the receipt of money from Barclays transferred money, and then they would transfer the positions that secured that repo.

And at some point during that process, Barclays became very uncertain as to some percentage of that collateral, I don't recall the exact amount, but it was a large number, maybe as much as, you know, 20 percent of the collateral, and when Barclays didn't accept those positions, they, by definition, just got left at JPMorgan.

They -- so JPMorgan was left with collateral that they were not comfortable with but Barclays would not accept, so -- and JPMorgan, I guess they attempted to negotiate but couldn't get that negotiation done.

Q. Who was the "they" who attempted to negotiate?

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HIGHLY CONFIDENTIAL - A. KIRK
A. That JPMorgan and Barclays attempted to negotiate, but they couldn't complete a negotiation for a transfer of that collateral.

Q. And when you say Keegan's explanation, I take it you're talking about the conversation you had with Keegan before the meeting?

A. Yes.

Q. Okay.

A. The 5:30 in the morning.

Q. And did Keegan give you any level of detail about why Barclays was uncertain about some percentage of that collateral?

A. It was collateral that they didn't -- was either they didn't have the expertise to value or was not transparent, meaning that there were financing vehicles that Lehman set up that went into the repo that you couldn't look through to what was in those financing vehicles.

Q. And did Mr. Keegan give you any information about what that collateral was, what type of securities?

A. He didn't know.

Q. Well --

A. In some cases he didn't know. In

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HIGHLY CONFIDENTIAL - A. KIRK
other cases it was, yes, it was illiquid and either high-yield or defaulted or consumer mortgage securities that were the ones he could identify that were very hard to value.

Q. I'm hearing this in two categories, and I want to be sure you and I are on the same page. There's a component of this collateral that's hard to value and there's a component that is not transparent, which may also make it hard to value --

A. Yes.

Q. -- but some of it's transparent and hard to value?

A. Yes.

Q. Okay. Did he identify any particular categories of hard-to-value securities? I get it, high-yield or mortgage-backed, but did he --

A. Distressed.

Q. Did he use the term "racers" at all?

A. That was the non-transparent category.

Q. Okay. Tell me what Mr. Keegan said to you about racers.

A. "What are they?"

Q. Anything else?

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. "And what's in them?" I said, "I
3 don't know." I then went and -- Paolo Tonucci,
4 I directed him to Paolo, who would be able to
5 tell him what was in those various financing
6 vehicles.
7 **Q. Do you know what Paolo Tonucci then**
8 **spoke to Mr. Keegan about?**
9 A. I don't know.
10 **Q. Did Mr. Keegan say anything else about**
11 **racers other than he didn't know what they were?**
12 A. He asked how would I find out.
13 **Q. Did Mr. Keegan say anything to you**
14 **that, in sum or substance, compared the assets**
15 **that Barclays had agreed to buy in the first**
16 **transaction, to use your term, and the assets**
17 **that were in the repo that were the subject of**
18 **this transfer problem?**
19 A. He summarized it as it was a very
20 different and riskier category of assets.
21 **Q. Was anyone else present when**
22 **Mr. Keegan and you had this early morning**
23 **conversation?**
24 A. No.
25 **Q. Did you understand from Mr. Keegan, in**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 day are we now?
3 **Q. I'm sorry. I've got you back at the**
4 **Friday meeting with -- we're back at the Friday**
5 **meeting with Bart, yourself, Klein --**
6 A. Okay.
7 **Q. -- Ricci and Keegan.**
8 A. Yeah.
9 **Q. Okay.**
10 A. So at that meeting I walk through -- I
11 summarized the issues, as I understand them, for
12 this dispute with Barclays. I inform Barclays
13 that those executives -- that JPMorgan had shut
14 down Lehman's DTC account, and I made the
15 supposition that that would make it impossible
16 to complete the transaction as contemplated.
17 **Q. And what, if anything, did Mr. McDade**
18 **have to say about those topics?**
19 A. He said he agreed with me.
20 **Q. Did you speak first in outlining the**
21 **issues?**
22 A. Yes.
23 **Q. And how did Klein, Ricci and Keegan or**
24 **any combination of those three men react to that**
25 **news?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **sum or substance, whether he had spoken to**
3 **others at Lehman about this problem by the time**
4 **he had spoke to you?**
5 A. I understood I was the first person he
6 had explained it to, at Lehman that he had
7 explained it to.
8 **Q. When you spoke to him and about this**
9 **topic, did you let him know that there was a**
10 **Friday meeting planned with -- that you had been**
11 **asked to come to an early morning meeting by**
12 **Mr. McDade?**
13 A. Yes.
14 **Q. And did you tell him you'd get back to**
15 **him after that meeting to see if there was a**
16 **solution to this problem?**
17 A. Yes.
18 **Q. So, in the course of that meeting, now**
19 **we've got the JPM issue, it's been identified,**
20 **you've had the first transaction outlined to you**
21 **broadly, the JPM problem --**
22 A. Right.
23 **Q. -- has been also described. What**
24 **happens next?**
25 A. I'm sorry, so where -- what time of

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. There was some question as to, well,
3 what do we do now? I suggested that the only
4 reasonable course of action would be to proceed
5 with the transaction substituting the repo
6 assets, the assets that Barclays had lent
7 against, for all the other securities that had
8 been contemplated in the transaction and leave
9 the rest of the transaction as was.
10 **Q. So if I understand this -- I want to**
11 **make sure I understand this correctly. Your**
12 **suggestion was to take the assets that were the**
13 **subject of the first transaction roughly**
14 **outlined in that schedule?**
15 A. Yeah.
16 **Q. And instead of transferring that body**
17 **of assets, transfer the body of assets that are**
18 **in the repo, correct?**
19 A. Yes.
20 **Q. Maybe I'm not understanding. Is the**
21 **problem here, doesn't it involve the assets that**
22 **are in the repo? Hasn't Mr. Keegan told you**
23 **that Barclays is uncertain about some components**
24 **of the repo collateral?**
25 A. So, again, the issue was that it was

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 my view that JPMorgan would not transfer one
3 dollar of one asset unless they got whatever
4 they wanted in a negotiation from Barclays or
5 anybody else, and even then they wouldn't -- it
6 didn't appear that they would do anything but be
7 hostile, having shut down our DTC account, which
8 is a, I mean, that's a colossal nightmare. You
9 know, you've got tens of billions of dollars of
10 securities supposed to settle a regular way that
11 you've been transacting with your clients, and
12 every single one of them fails -- both sides,
13 buys and sells.

14 **Q. How is JPM in a position to shut down**
15 **Lehman's?**

16 A. They're our clearing bank.

17 So it was, again, my supposition,
18 which was confirmed by, you know, the senior
19 finance staff and Bart and then finally the
20 Barclays guys, that, you know, JPMorgan should
21 be viewed as not going to cooperate. And
22 Barclays was attempting to reach JPMorgan and
23 never got a return call, was my understanding.
24 I was told that by probably Gerard LaRocca or
25 Keegan, one of them, and hence, you know, the

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 only assets that could participate in any way in
3 this transfer were ones that Barclays had held
4 in custody at their clearing bank, Bank of New
5 York, and potentially any assets at Lehman that
6 were unencumbered and were held away from
7 JPMorgan.

8 **Q. So, again, forgive me if I'm thick**
9 **here, but is the problem with JPMorgan --**
10 **withdrawn.**

11 **When you talk about the assets that**
12 **Barclays had at Bank of New York, those were**
13 **assets within the repo?**

14 A. Yes.

15 **Q. Within the Barclays repo, yes?**

16 A. Yes.

17 **Q. Do you know the amount, the value of**
18 **the assets that were at Bank of New York within**
19 **the Barclays repo?**

20 A. I didn't know that. I didn't know the
21 amount or the value of those assets.

22 **Q. Okay. And again, so we're clear, you**
23 **didn't know at the time or you don't remember**
24 **now, or both?**

25 A. I didn't know at the time.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **Q. Okay. And the problem with JPM**
3 **refusing to transfer assets over, is that away**
4 **from the repo?**

5 A. Yes.

6 **Q. Okay. So your suggestion is to focus**
7 **on the repo as the body of assets that can be**
8 **transferred to Barclays?**

9 A. Right.

10 **Q. Plus unencumbered, other unencumbered**
11 **assets?**

12 A. That were not held or cleared through
13 JPMorgan.

14 **Q. That are away from JPMorgan?**

15 A. Correct.

16 **Q. Now, did you have an idea then of what**
17 **the value of that total package could be?**

18 A. No.

19 **Q. So you've made --**

20 A. Because I wasn't clear on what
21 actually got transferred and what didn't get
22 transferred. I knew broadly the size of the Fed
23 repo. I didn't know what the disputed amount
24 was or the assets.

25 **Q. I just need to follow up a bit on the**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **disputed amount.**

3 A. Yeah.

4 **Q. I'm trying to be as clear as I can --**

5 A. Yeah.

6 **Q. -- as to what's the JPM problem and**
7 **how much of that is --**

8 A. Right.

9 **Q. -- whether that's -- we've established**
10 **the JPM problem is away from the repo, right?**

11 A. The JPM problem vis-a-vis Lehman
12 Brothers was away from the repo, that is
13 correct.

14 **Q. But vis-a-vis Barclays, it was not**
15 **away from the repo?**

16 A. My understanding was there was a
17 dispute about Barclays not accepting all the
18 collateral out of the Fed, only some of it, and
19 that collateral they didn't accept got left
20 behind or, by definition, stays at the clearing
21 bank, which was JPMorgan. JPMorgan clears for
22 the Fed.

23 **Q. And I think you had an -- a rough idea**
24 **of what percentage of that. It was some**
25 **percentage. It could have been as much as 20**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 percent that Barclays would not accept, yes?
3 A. Yes.
4 Q. Did you have a sense of a dollar
5 amount of what was net of the amount that
6 Barclays would not accept?
7 A. It was somewhere in the 40s.
8 Q. And when you're talking about the
9 amount of the repo, are you talking about the
10 amount that was financed or the total collateral
11 as pledged? Withdrawn.
12 You told me you're not an expert in
13 repos --
14 A. Yeah.
15 Q. -- and neither am I, but I understand
16 there's a haircut.
17 A. Yeah, I think I was talking about the
18 amount financed, but I'm not -- I'm sketchy on
19 that.
20 Q. So you make this proposal. McDade
21 says he thinks you're right. What's the
22 reaction from Klein, Ricci and Keegan?
23 A. Ricci says -- there was some
24 discussion, I don't recall the specifics of it,
25 but Ricci then I recall specifically says, I

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 The problem turned out to be not only
3 was the data delivered in a not usable fashion
4 to the heads of the desk, but it was a different
5 set of securities. So we had to -- it was
6 determined that the finance staff of Lehman
7 Brothers needed to work with the finance staff
8 at Barclays and get a list of everything that
9 was in their repo line, and then take that off
10 the systems and try to put it together in a way
11 that could be delivered to the various trading
12 desks to try to put some value on it.
13 Q. When you referred before to, you know,
14 we had started that process, was that a -- were
15 you referring --
16 A. From the night of the --
17 Q. Yes.
18 A. -- Daniel Flores' e-mail.
19 Q. That's the one that refers to trying
20 to come up with fire-sale-type prices?
21 A. Yes.
22 Q. What in your mind was the connection
23 between the, what I'll call the fire sale
24 analysis and the problem you were dealing with
25 on Friday? I'm not sure I'm clear on that.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 believe he's right. We have to change course.
3 Q. I know it's a long time ago, but just
4 given that phrase, is that -- are you quoting
5 him? Are you summarizing him?
6 A. I'm summarizing him. I was under a
7 tremendous amount of pressure and stress, so my
8 memory is a little fuzzy from that.
9 Q. Sure.
10 A. At one point in this meeting, Mike
11 Klein looked at me and said, "Do you need a
12 doctor?"
13 Q. Really?
14 A. Yeah.
15 Q. Well, you're kind of a last-minute
16 volunteer in this thing, you know?
17 A. Yeah. Story of my life.
18 Q. What did Klein say?
19 A. He said, okay, let's get to it.
20 Q. And did Keegan say anything?
21 A. He said, well, we haven't analyzed
22 this collateral so we don't know what it's
23 worth. How are we going to figure out what it's
24 worth? And we said we had started a process
25 with these large positions.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Only that we had -- that I could tell
3 the Barclays guys that we were already trying to
4 value some collateral and relative to the marks.
5 The -- Lehman suffered, you know, two issues
6 that week around valuations. One was the
7 markets were unbelievably volatile and
8 incredibly illiquid, and that we were a less
9 than desirable counterparty for our -- so that
10 we had been, when we had been liquidating
11 collateral, we had been losing a lot of money,
12 and in addition to that, a smaller problem was,
13 you know, since the firm had filed for
14 bankruptcy, not every person was showing up to
15 work.
16 Q. Now, the fire sale liquidation
17 analysis, the top 100 positions there, did
18 you -- are you saying that some of those might
19 have been in the repo?
20 A. Yeah, but we didn't know which ones.
21 Q. You didn't know?
22 A. We had no idea.
23 Q. That's not, so we're clear, the 100
24 positions we're talking about there is not with
25 direct reference to what was in the repo?

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HIGHLY CONFIDENTIAL - A. KIRK

A. No, not at all. We didn't know we had this problem Thursday night.

Q. What's the tone of the Friday meeting? I know it's tense and Klein says do you need a doctor, but are people angry? Are they calm? Are they -- what's the temperature in this meeting?

A. Anxious. It's very, very anxious. How are we going to be able to try to get anything over the goal line by 4 o'clock this afternoon, and if we don't, you we don't believe we can survive the weekend.

Q. And why 4 o'clock that afternoon? Was that the bankruptcy hearing?

A. Yeah, that was the bankruptcy hearing, the scheduled bankruptcy hearing.

Q. Is there any discussion in this meeting about what, if anything, needs to be said to the bankruptcy court about this event, these events?

A. That it would have to be explained. This transaction was very different than what had been previewed two days before, and it would have to be explained why it came up.

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Was there any discussion about the consideration Barclays was to give in the agreement also changing?

A. Besides the amount, no.

Q. Well --

A. Meaning besides the fact that it wasn't 72 million, you know, the attempt was to get it so that the assets and liabilities would balance.

Q. And the 72 million, you're looking at Exhibit 19, yeah?

A. Yes.

Q. That financial schedule.

Was there any discussion of the compensation and cure components of the assumed liabilities changing?

A. Not at that meeting.

Q. Did you at some point hear a discussion about the compensation and cure components changing?

A. At some point late in the day, there was a -- not on the compensation, there was no discussion of compensation. Ian -- not Ian, Paolo was attempting to figure out a better

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Who said it would have to be explained?

A. Barry -- in that meeting -- I apologize, some of these meetings are blurs.

Q. Sure.

A. But at some point during the day, Barry Ridings, I was in a meeting with him, I believe it was maybe at the tail-end of this meeting, he came in and, you know, he listened to this explanation again and then he said, okay, we're going to have to be able to explain this.

Q. And did the Barclays folks in the meeting -- and by that, I'm including Klein here, Klein, Ricci, Keegan -- did they have anything to say about whether and when this would have to be explained to the court?

A. No, they were taking Barry's lead.

Q. Now --

A. We all knew that there was a court hearing scheduled at 4 o'clock.

Q. Why do you describe this as a very different agreement?

A. The list of assets is different.

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HIGHLY CONFIDENTIAL - A. KIRK

estimate. I think they had always continually worked on it, but they were trying to figure a better estimate.

Ian -- I remember Paolo coming into a meeting I was in, I don't remember who it was with, but he came in and said I'm working through the cure payments to try to see if there's some wiggle room there, so to speak, in terms of what is that estimate. I never got a -- I was -- that was not part of the transaction I was concerning myself with. I was supposed to try to shepherd along as best as possible in this incredible short timeframe some valuation work that we could get to on the assets.

Q. Wiggle room up or wiggle room down, or both?

A. I don't -- he didn't mention it one way or another. Some variance I guess is a better way to put it. I don't remember whether it was higher or lower.

Q. In the Friday meeting with McDade and you and Klein and Ricci and Keegan, was there any discussion about Lehman defaulting on the

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **repo?**
3 A. No.
4 **Q. Were you ever involved in any**
5 **discussion concerning the topic of Lehman**
6 **defaulting on the repo?**
7 A. Not a discussion. I received an
8 e-mail that referenced it, but --
9 **Q. From whom did you receive the e-mail?**
10 A. I don't have it in front of me.
11 You've got it, Gerry Reilly. That was
12 a couple days earlier when I wasn't involved, so
13 I didn't pay attention to it.
14 **Q. Do you recall that as an e-mail where**
15 **Reilly proposed defaulting on the repo was the**
16 **best way to deliver the bulk discount to**
17 **Barclays?**
18 A. I would have to look at it again.
19 **Q. We'll get to that a little later.**
20 A. Fine.
21 **Q. Is there any discussion in the Friday**
22 **meeting of that, of using the repo as a means of**
23 **delivering a haircut to Barclays?**
24 A. No.
25 **Q. Was there any discussion in the Friday**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **what's previously been marked as Exhibit 21.**
3 **Take a moment to look through the document.**
4 **(Document review.)**
5 A. Okay.
6 **Q. Is that the document, the e-mail you**
7 **referred to a moment ago?**
8 A. Yes.
9 **Q. At the very bottom of the document,**
10 **paragraph 3, and this is within the e-mail from**
11 **Reilly to Lowitt, Gelband, Tonucci and Kelly, is**
12 **the following, "Not clear on the amount of block**
13 **discount or how we make it happen. Defaulting**
14 **on repo could be the best, as discount could be**
15 **taken from haircut." Do you see that?**
16 A. Uh-huh.
17 **Q. You may have said something a moment**
18 **ago about this, but let me ask you, did you have**
19 **an understanding when you saw this e-mail of**
20 **what it was Mr. Reilly was talking about, using**
21 **the repo?**
22 A. No, this was before I was involved,
23 and I was CC'd on this e-mail because of my work
24 in the auction rate book and the prime brokerage
25 financing at the time.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **meeting of terminating the repo?**
3 A. I recall a discussion, I don't
4 remember who was in the meeting, but with
5 Barclays that if we couldn't get to closure that
6 day --
7 **Q. That Friday?**
8 A. That Friday.
9 **Q. Okay.**
10 A. -- it was likely they would terminate
11 the repo.
12 **Q. Do you know if at any point Barclays**
13 **did terminate the repo?**
14 A. I don't know the answer to that.
15 **Q. When the Barclays folks said if they**
16 **couldn't get to closure on Friday, they would**
17 **have to terminate the repo, was there any**
18 **reaction from the Lehman folks to that**
19 **statement?**
20 A. We understood they had to do what was
21 within their rights and what they felt was
22 appropriate.
23 **Q. Who said that?**
24 A. McDade.
25 **Q. I'm going to show you, Mr. Kirk,**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Q. Okay. So the first paragraph of**
3 **Mr. Reilly's e-mail refers to the auction rate**
4 **book?**
5 A. Yeah.
6 **Q. And the question appears to be whether**
7 **it's staying or going in the transaction, yes?**
8 A. Right.
9 **Q. And was it your understanding that it**
10 **was that first question that was the reason it**
11 **was forwarded to you, because you're in the ARS**
12 **world?**
13 A. I had been in the ARS world in my
14 previous job, and I assumed it was forwarded to
15 me so they could figure out who should answer
16 these questions, who would be most expert to
17 answer them.
18 **Q. All right. So when you got the whole**
19 **e-mail, including the other two questions --**
20 A. Yep.
21 **Q. -- am I fairly understanding your**
22 **testimony that you didn't really focus on 3**
23 **because it wasn't in your area of**
24 **responsibility, you didn't understand it to be**
25 **addressed to you?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. As a matter of fact, my answer
3 indicates what I did was I redirected them to
4 people I thought could be helpful.
5 **Q. Okay.**
6 A. That's what I thought my
7 responsibility would be.
8 **Q. Okay.**
9 A. Try to put point them in a direction.
10 **Q. Beg your pardon.**
11 And with respect to the third
12 question, you say, "The third question is
13 definitely for Cogs," C-O-G-S. Is that a
14 reference to Mr. Coghlan?
15 A. John Coghlan, yes.
16 **Q. John Coghlan, okay. And why was it a**
17 **question for John Coghlan?**
18 A. Because he was head of repo financing
19 at the firm.
20 **Q. Do you know if Mr. Coghlan ever did**
21 **address the third question?**
22 A. No idea.
23 **Q. Now, when you were in the Friday**
24 **meeting and the topic of the repo was being**
25 **discussed -- withdrawn.**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 business anymore.
3 **Q. Was there a reference to the -- any**
4 **discussion in the Friday meeting of a discount?**
5 A. No, not that I recall.
6 **Q. Okay. So I'll summarize it just to**
7 **frame my next question so you're not married to**
8 **how I do this. But as I understand it, the**
9 **meetings happened, you identified the JPM**
10 **problem, the recommendation is made to transfer**
11 **what's in the repo, and there's some issues**
12 **about how to value what's in there; is that a**
13 **fair summary?**
14 A. Yes.
15 **Q. Okay. And the general sense of the**
16 **meeting from both sides of the table is, okay,**
17 **let's go to it and try and figure this out, we**
18 **have until about 4 o'clock to see if we can**
19 **solve this, yes?**
20 A. Yes.
21 **Q. And Barclays says if we can't reach a**
22 **resolution of that by about 4 o'clock, we may**
23 **have to terminate the repo, correct?**
24 A. Correct.
25 **Q. And McDade has said if that comes to**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **This is sent, this e-mail comes to you**
3 **on Thursday?**
4 A. Yes.
5 **Q. At roughly 6:40 in the morning. Note**
6 **that that's Greenwich mean time shown there.**
7 A. Yeah.
8 **Q. The next morning you're in a meeting**
9 **where the repo is being discussed. Did that**
10 **trigger any recollection in your mind about, you**
11 **know, an e-mail discussion the prior day about**
12 **using the repo as a means of making the block**
13 **discount happen?**
14 A. No, I, you know, I get 500 e-mails a
15 day, and during this period of time we were
16 getting probably twice that. So ...
17 **Q. And when you saw a reference --**
18 A. I was answering all of them, so, you
19 know, or as many of them as I could.
20 **Q. And also to the mysterious number that**
21 **we finally identified.**
22 A. Yes, and then there's the mysterious
23 number.
24 **Q. Now, the --**
25 A. I don't think the company's in

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **be, you know, you have to do what you have to**
3 **do?**
4 A. Those are your rights.
5 **Q. And you don't know if the repo was in**
6 **fact ever terminated by Barclays?**
7 A. I don't know that.
8 **Q. Okay. So now what happens? Does the**
9 **meeting end or is there further discussion?**
10 A. I recall the meeting ending at that
11 time.
12 **Q. And what did you do next?**
13 A. I went back to my office. I called
14 the various senior executives I was going to
15 meet with and told them that we should be
16 getting a new schedule at some point of assets
17 that we would have to -- they should ignore that
18 schedule of assets and we would be getting a new
19 schedule of assets at some point to try to put
20 some values on.
21 **Q. When you say "ignore that schedule of**
22 **assets," again, for clarity of record, are you**
23 **talking about Exhibit 19, the original financial**
24 **schedule?**
25 A. I'm sorry, no, I'm talking about the

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 list of hundred assets that was delivered to the
3 desk early that morning.
4 **Q. Got it. As part of the fire sale**
5 **liquidation?**
6 A. Correct.
7 **Q. And you told them they would be**
8 **getting a new list of assets. Who is it you're**
9 **having these communications with?**
10 A. I certainly called Mike Gelband and I
11 would have called some subset, although I don't
12 recall who I spoke to specifically or who Mike
13 spoke to, but I would have called either
14 Kaushik, Charlie, Eric and Gerry.
15 **Q. Eric is Eric Felder?**
16 A. Yes.
17 **Q. And Gerry is Gerald Donini?**
18 A. Yes.
19 **Q. And who is Charlie? Is that Charlie**
20 **Spero?**
21 A. Spero, uh-huh.
22 **Q. And did do you this on a conference**
23 **call? Call them separately? In a meeting?**
24 A. Probably called them separately.
25 **Q. And what happened after that?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 pinpoint fashion in this timeframe, but we'll
3 try.
4 **Q. And at some point was there -- did**
5 **they solve that problem? Did they produce**
6 **valuations?**
7 A. The only valuations we got was that --
8 I don't know what they communicated to Barry
9 Ridings or the people working on that specific
10 testimony.
11 **Q. Uh-huh.**
12 A. But I got the word back generally that
13 many of these positions were so illiquid that,
14 you know, that if we were to try to sell them,
15 given our circumstances, you know, the bids
16 might be down 20 percent.
17 **Q. Was there any discussion about looking**
18 **at the valuations that Bank of New York had**
19 **given to what was in the repo?**
20 A. We didn't have access to Bank of New
21 York's valuations, I don't believe.
22 **Q. Did you talk to anyone who was**
23 **familiar with how repurchase -- more familiar**
24 **than you with how repurchase agreements worked**
25 **to see if the collateral agent applied**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. We waited for a deliverable schedule
3 from finance.
4 **Q. Did you get one?**
5 A. Got one at sometime within the hour.
6 **Q. And from whom within finance did you**
7 **receive that?**
8 A. I don't remember who it was.
9 **Q. Who within finance was in charge of**
10 **that piece?**
11 A. It would have been some combination --
12 well, no, most likely it would have been Paolo,
13 working with accounting.
14 **Q. And Paolo or somebody at his direction**
15 **delivers a schedule. To whom is it delivered?**
16 A. I don't recall, but I'm sure it was
17 instructed to be delivered directly to the
18 people on this list that I mentioned before and
19 myself and Mike.
20 **Q. And what happened with the list?**
21 A. We asked the senior managers to try to
22 value the list given the market conditions that
23 day, and generally the response was the markets
24 are too volatile, there's too many line items,
25 it's not possible to get this done in any

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **valuations to what was held as collateral?**
3 A. I don't recall having that specific
4 conversation.
5 **Q. Do you know if anyone did have that**
6 **discussion, that conversation with Barclays?**
7 A. They might have.
8 **Q. Without regard to the particular**
9 **detail or even the number --**
10 A. Yeah.
11 **Q. -- you had a sense of whether by, you**
12 **know, at some point on that Friday a value was**
13 **put on the collateral within the repo?**
14 A. We at Lehman determined that the
15 out -- the volatility of those outcomes we
16 couldn't put a number that was specific on it.
17 It was, given how illiquid many of the assets
18 were, some of the assets you could value, but
19 the markets were tremendously volatile all week.
20 We had had, you know, been getting
21 closed out of -- just the prior day we got
22 closed out of a repo, a futures position on the
23 CME that had excess margin of, you know, \$1.6
24 billion.
25 As far as we could tell, the markets

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 hadn't moved that much. Many of them were in
3 Treasury and government bond futures, but the
4 CME called us to inform us they had closed us
5 out of the position and we had lost all the
6 money in excess margin. So it was becoming very
7 hard to value even what were deemed to be liquid
8 securities.

9 **Q. Just so we're clear here, the closing**
10 **out of the position by the Chicago Merc doesn't**
11 **bear on the collateral that's within the repo;**
12 **that's a separate event, correct?**

13 A. That is a separate event, but it
14 was -- it was demonstrative of the volatility
15 and the issues we were wrestling with.

16 **Q. And the question that I would like to**
17 **put is, did Lehman come to some number, did it**
18 **come to a value, a valuation of the collateral**
19 **that was within the Barclays Repurchase**
20 **Agreement?**

21 A. We couldn't come up with a specific
22 value. We didn't have time. We knew we
23 didn't -- we tried, but we couldn't, and we knew
24 the risk was that Barclays would close out of
25 the repo and take all that collateral, so they

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **Who would keep that?**

3 A. If there was excess collateral, Lehman
4 would keep that value.

5 **Q. Was that discussed at the Friday**
6 **meeting, that if there was excess collateral, it**
7 **would say with Lehman?**

8 A. There was not a discussion of closing
9 out the repo and the mechanics of it.

10 **Q. So did there come a point on Friday**
11 **where Lehman communicated to Barclays either --**
12 **where it communicated a value of the repo or it**
13 **said it couldn't? What happens next vis-a-vis**
14 **talking to Barclays.**

15 A. In terms of talking to Barclays, the
16 next meeting was at some point, call it 3
17 o'clock in the afternoon, and they were
18 indicating that the -- their view of the value
19 of the repo securities was far below the stated
20 value and below their loan value and that Lehman
21 should attempt to find other unencumbered
22 assets, should continue to attempt to find other
23 unencumbered assets or the transaction may not
24 take place.

25 **Q. Now, is this response from Barclays**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 owned it, that we would end up with no excess
3 from that collateral, and that from the very
4 high-level work that the senior risk managers
5 did, which we were relying upon, that we could
6 be well out of the money, it was likely that we
7 could be well -- we would be well out of the
8 money in that below the haircut, which I
9 believe, understood to be somewhere between 5
10 and 10 percent.

11 **Q. When you referred to a moment ago to**
12 **one of the risks was that we would not end up**
13 **with -- we would end up with no excess, what did**
14 **you mean by that?**

15 A. Meaning that if Barclays closed us out
16 of the repo, our experience had been, not just
17 in that period of time but other cases, but
18 certainly in that week, that their liquidation
19 of that collateral would eat through more than
20 the haircut they had and that they would not get
21 back a hundred cents on the dollar. So we,
22 Lehman, would not receive any proceeds back from
23 the liquidation of that collateral.

24 **Q. What was your understanding of what**
25 **would happen if there was excess collateral?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 **after the Friday meeting has ended? I want to**
3 **get a sense of the timeline within Friday of**
4 **when Barclays does this.**

5 A. This is like 3 o'clock in the
6 afternoon.

7 **Q. Does Barclays tell you, does Barclays**
8 **tell Lehman how much difference has to be made**
9 **up?**

10 A. No.

11 **Q. Is your answer that you don't remember**
12 **or that you remember that they didn't?**

13 A. I remember they didn't.

14 **Q. So what happens now?**

15 A. We said we'll continue to look. And
16 Ian and I had a conversation with McDade
17 offline, just he and I. I said, I don't have
18 any basis or enough information to argue with
19 them about their point of view, about the value
20 of collateral, and that the high-level work
21 we've been doing leads me to believe that they
22 have a reason to be nervous about this.

23 **Q. And what was --**
24 **(Mr. Kelley confers with the witness.)**

25 A. Barclays.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 I'm sorry. Who is "they," he asked
3 me. Barclays has a reason to be nervous.
4 **Q. And did McDade give any instructions**
5 **or suggestions about what to do next?**
6 A. He said, well, make sure Ian is
7 working on any possible unencumbered assets.
8 **Q. So did McDade give a target of any**
9 **kind of how much in unencumbered assets needed**
10 **to be found?**
11 A. At that point, all we could do was
12 figure out what was there, and specifically I
13 don't recall, but I do -- I do recall that the
14 shortfall was described as, you know, billions
15 of dollars.
16 **Q. And by "the shortfall," you're**
17 **referring to what?**
18 A. The value that Barclays thought those
19 repo assets were worth versus their stated
20 value.
21 **Q. That's the shortfall between what**
22 **Barclays thought they were actually worth and**
23 **the amount of the repo?**
24 A. Yeah.
25 **Q. So your recollection is that the**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **things was there was a shortfall?**
3 A. Yes.
4 **Q. It wasn't Barclays was saying it**
5 **wouldn't be made up out of the repo bucket?**
6 A. Yeah.
7 **Q. Therefore, other assets, unencumbered**
8 **assets, capable of delivery had to be found?**
9 A. Right.
10 **Q. It was in the billions, but for**
11 **your -- for the purposes of what you were doing,**
12 **you didn't really need to know the number, you**
13 **just needed to know the problem had --**
14 A. Right, I was not the one who was going
15 to solve those specific issues, so that was
16 someone else's job.
17 **Q. Was anyone other than Lowitt involved**
18 **in the particulars of solving the problem?**
19 A. I don't know the answer to that.
20 **Q. Did you ever learn whether Lowitt**
21 **enlisted others in the task of finding**
22 **unencumbered assets?**
23 A. No, I didn't, I didn't find out.
24 **Q. Did there come a time when you learned**
25 **whether additional value, additional**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **shortfall was in the billions of dollars?**
3 A. Yes.
4 **Q. But do you have a recollection of**
5 **whether it was between 2 billion and a gazillion**
6 **billion? Is there some range you were thinking**
7 **of at the time?**
8 A. Somewhere between 2 and 5.
9 **Q. And I'm trying to get a sense here,**
10 **that's why I keep pushing at the number --**
11 A. Yeah.
12 **Q. -- I'm trying to get a sense here of**
13 **what the project is. Is it go find every**
14 **unencumbered asset we have on the one end of the**
15 **possibilities, or we have to make up this**
16 **specific shortfall, go find that amount at the**
17 **other?**
18 A. I didn't have the conversation. Bart
19 had the conversation with Ian, so I didn't have
20 that conversation specifically with him.
21 **Q. So you don't know one way or the other**
22 **whether Mr. McDade gave a target of some kind to**
23 **Mr. Lowitt?**
24 A. No, I don't know that.
25 **Q. Your understanding from your view of**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **unencumbered assets were located that could be**
3 **transferred to Barclays?**
4 A. Sometime late in the afternoon between
5 3 and 4, Ian came into a meeting where I was
6 about to start a phone call with Bart, the Weil
7 Gotshal lawyers on the phone, and I was sitting
8 in the room with Mark Shapiro and I think it was
9 Jim Seery and the Barclays, again, Diamond,
10 Ricci, Klein and Keegan, and Ian came in and he
11 said there's a -- there's a schedule of assets
12 that we have that are unencumbered. I believe
13 the number was \$1.9 billion of marked value.
14 In addition, he said there might be
15 value in our 15c3 margin, which at the time I
16 remember that specifically because I was like,
17 "Gee, what's that? I've never heard of that."
18 So he said there might be value there, I don't
19 know yet, and there might be others.
20 So we said to Ian, well, get us a
21 schedule of what's in the 1.9 billion in the --
22 I think he referred to it as being in the box
23 unencumbered of these unencumbered assets, i.e.,
24 they were being financed by Lehman's unsecured
25 debt, I believe at the time, or equity, and he

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 came back with that list, showed it to myself
3 and to Keegan and some others.

4 Keegan looked at it and said, you
5 know, this is the -- these assets are even
6 harder to value than what we already have. I
7 don't even know what these are. I specifically
8 remember there being residential mortgage
9 residual interests and things like IOs and some
10 very illiquid aged positions in high-yield and
11 distressed debt. I don't specifically recall
12 what else it was, but I do recall the list was
13 a -- there was a reason why there was nobody
14 financing those assets and it was because they
15 were the most illiquid and hardest to value
16 securities that Lehman Brothers owned on its
17 balance sheet.

18 **Q. So when Keegan said these are even**
19 **harder to value than --**

20 A. Yeah.

21 **Q. -- than the other stuff, was he**
22 **comparing this new schedule with the**
23 **hard-to-value stuff in the repo?**

24 A. Yes.

25 **Q. And apart from saying it was hard to**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **value, did Keegan have anything to say about**
3 **that?**

4 A. He said I don't know how I'm going to
5 put a value on this of any positive number.

6 **Q. Describe for me as best you can the**
7 **conversation about that topic and who said what.**

8 A. Ian came in. He delivered this -- he
9 said -- we started the conversation with Ian
10 delivering the list of assets, and he handed it
11 to Keegan -- he handed out probably five copies.
12 Most people were just staring at it saying
13 nothing.

14 Mike looked at it and said, you know,
15 I -- what's this asset? What's that asset? I
16 think Ian may have answered specifically if he
17 knew what the nature of those assets were,
18 because in like residential mortgages you have
19 names for deals that unless you knew that that
20 was a residential mortgage deal, you wouldn't
21 know what it was, you know, Sasco or things of
22 that nature.

23 And Ian had some familiarity with
24 the -- with what the assets were because he had
25 been responsible for financing those sorts of

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 assets or, in this case, having the equity
3 finance the assets. And so there was some back
4 and forth around that, and Keegan made the
5 conclusion that he was not going to warrant any
6 positive value on these assets from his seat,
7 and he made that -- he sort of said that to Rich
8 Ricci and Bob Diamond: "I can't value these. I
9 would be very nervous about putting a positive
10 value on them."

11 **Q. So, just to kind of cut to the end of**
12 **the sequence here, does Barclays agree to take**
13 **these additional buckets of value, you know, the**
14 **15c3 and the assets, the unencumbered assets in**
15 **the box?**

16 A. Yes.

17 **Q. And when they make that agreement, are**
18 **you present? Was that at this meeting?**

19 A. Yes.

20 **Q. And tell me what was said in that**
21 **regard.**

22 A. That, all right, we don't know what
23 they're worth. They might be worth something,
24 so we want them. And Bart was on the phone, he
25 agreed -- he agreed to that, and I think that

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 was the sum and the substance as to what was
3 said about those assets.

4 **Q. Was any number put on now the total**
5 **value of the deal, combining the assets that**
6 **were in the repo plus the 15c3 and the**
7 **unencumbered assets in the box?**

8 A. I don't recall a specific number being
9 put on the -- on the deal.

10 **Q. Whether you recall today what the**
11 **number was, I'm going to press on this a little**
12 **bit, do you recall if a number was put out**
13 **there?**

14 A. I'm sorry, I don't recall what --
15 whether -- I don't recall whether there was a
16 number specifically put out there.

17 **Q. Okay. And did you have a sense after**
18 **this conversation, Mr. Lowitt reports on the**
19 **15c3 assets and the unencumbered assets and**
20 **Keegan says, I can't value those and then the**
21 **agreement's made, well, we'll take them because**
22 **there may be some value, whether after that**
23 **point there were additional searches for value?**
24 **Do you know one way or the other?**

25 A. I don't recall one way or another. I